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Attorneys for Plaintiff John P. Anderson, individually and in his official capacity as a Sheriff of Madera County

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

REGGIE LEWIS, in his purported official capacities as chairman of the Picayune Rancheria of the Chukchansi Indians; a representative of the Chukchansi Economic Development Authority; and a representative of the Chukchansi Indian Housing Authority;

CHANCE ALBERTA, in his purported official capacities as vice chairman of the Picayune Rancheria of the Chukchansi Indians; a representative of the Chukchansi Economic Development Authority; and a representative of the Chukchansi Indian Housing Authority;

CARL BUSHMAN, in his purported official capacities as a council member of the Picayune Rancheria of the Chukchansi Indians; a representative of the Chukchansi Economic Development Authority; and a representative of the Chukchansi Indian Housing Authority;

IRENE WALTZ, in her purported official capacities as a council member of the Picayune Rancheria of the Chukchansi Indians; a representative of the Chukchansi Economic Development Authority; and a representative of the Chukchansi Indian Housing Authority;

LYNN CHENOT, in her purported official capacities as a council member of the Picayune Rancheria of the Chukchansi Indians; a representative of the Chukchansi Economic Development Authority; and a representative of the Chukchansi Indian Housing Authority;

DAVID CASTILLO, in his purported official capacities as a council member of the Picayune Rancheria of the Chukchansi Indians; a representative of the Chukchansi Economic Development Authority; and a representative of the Chukchansi Indian Housing Authority; and

MELVIN ESPE, in his purported official capacities as a council member of the Picayune Rancheria of the Chukchansi Indians, a representative of the Chukchansi Economic Development Authority; and a representative of the Chukchansi Indian Housing Authority.

## Defendants

1       The application of Plaintiff John P. Anderson (“Plaintiff” or “Sheriff”) for a temporary  
 2 restraining order and order to show cause why a preliminary injunction should not issue came  
 3 before this Court for consideration on October 17, 2013.<sup>1</sup> Thomas S. Slovak of Slovak Baron  
 4 Empey Murphy & Pinkney LLP, appeared on behalf of Plaintiff and moving party, John P.  
 5 Anderson, in his official capacity as the Sheriff of Madera County and individually. Alex Lozada of  
 6 Rosette LLP specially appeared on behalf of Defendants The Picayune Rancheria of the  
 7 Chukchansi Indians (“Tribe”), Chukchansi Economic Development Authority (“CEDA”) and  
 8 Chukchansi Indian Housing Authority (“CIHA”) and all of the individually named Defendants,  
 9 collectively referred to as the “Lewis Faction”, other than Defendants Duran and Howard. Lester  
 10 Marston of Rapport & Marston specially appeared on behalf of the Tribe and CEDA representing  
 11 that his clients known as the Ayala Faction were the duly authorized Tribal Council and not the  
 12 Lewis Faction. Attorney Marston also stated his special appearance on behalf of David Rapport  
 13 representing Attorney Rapport to be counsel for CIHA. Melanie Daniel was admitted pro hac vice  
 14 as co-counsel with Attorney Marston specially appearing and representing the same parties as  
 15 Attorney Marston.

16       Oral notice and a copy of all pleadings having been provided to all appearing counsel and to  
 17 counsel for the Reid Faction, (another group of Tribal members claiming to be the authorized  
 18 representatives of the Tribe, CEDA and CIHA) and with proof of service of same also having been  
 19 provided to non-appearing Defendants Duran and Howard, and upon consideration, and for good  
 20 cause shown, IT IS HEREBY ORDERED that the TEMPORARY RESTRAINING ORDER  
 21 application is GRANTED on the terms and conditions set forth below:

22       The Court may issue a temporary restraining order (“TRO”) pursuant to Federal Rule of  
 23 Civil Procedure 65. The standard for issuing a TRO is “substantially identical” to the standard for  
 24 issuing a preliminary injunction. *Stuhlbarg Int’l Sales Co. F. John D. Brush & Co.* 240 F. 3d 832,  
 25 839 n.7 (9<sup>th</sup> Cir. 2001) Thus, in order to obtain a TRO, a plaintiff must show: (1) likelihood of  
 26 success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that  
 27 the balance of the equities tips in his favor; and (4) that an injunction is in the public interest.

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28       <sup>1</sup> The hearing was recorded by a court reporter

1        *Winter v. Nat. Res. Def. Council, Inc.* 555 U.S. 7, 20, (2008) Alternatively, an injunction may issue  
 2 under the “sliding scale” approach if there are serious questions going to the merits and the balance  
 3 of hardships tips sharply in plaintiff’s favor, so long as plaintiff still shows a likelihood of  
 4 irreparable injury and that an injunction is in the public interest. *Alliance for the Wild Rockies v.*  
 5 *Coltrell*, 632 F.3d 1127, 1134-35 (9<sup>th</sup> Cir. 2011). “Serious questions are those which cannot be  
 6 resolved one way or the other at the hearing on the injunction.” *Bernhardt v. Los Angeles Cnty.*,  
 7 339 F.3d 920, 926-927 (9<sup>th</sup> Cir. 1988)). They “need not promise a certainty of success, nor even  
 8 present a probability of success, but must involve a ‘fair chance of success on the merits.’” *Marcos*,  
 9 *F.2d at 1362.*

10        “An injunction is a matter of equitable discretion and is an extraordinary remedy that may  
 11 only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Earth Island Inst.*  
 12 *V. Carlton*, 626 F.3d. 462, 469 (9<sup>th</sup> Cir. 2010) (internal quotation marks omitted).

13        In support of this Order, the Court makes the following findings based on the evidence  
 14 submitted by Plaintiff, including Plaintiff’s Verified Complaint, supporting declarations and matters  
 15 subject to judicial notice.

16        Currently, three groups known as Factions (Lewis, Ayala and Reid) from the Tribe claim  
 17 to be the Tribe’s sole authorized tribal council or governing body of the Tribe, CEDA and CIHA.  
 18 This internal dispute over the identity of the Tribe’s governing body has led to violence and  
 19 physical confrontations between the competing groups and/or agents or others operating on their  
 20 behalf. These armed incidents of violence have resulted in injuries, including at least one  
 21 stabbing, injuries to others requiring hospitalization and damage to property. As a result of the  
 22 internal disputes and numerous events supported in the record, the Sheriff has been called upon  
 23 routinely to intercede to keep the peace and to investigate allegations made by the various Factions  
 24 against each other. Presently at least two of the factions have retained security guards who are  
 25 armed and who, but for the intercession of the Sheriff now ongoing, appear ready to renew such  
 26 confrontations should the Sheriff be restricted in his law enforcement activities and duties.

27        The events supporting this Order include evidence that the confrontations in the past have  
 28 occurred off the Rancheria (“reservation land”) and that confrontations have occurred and are

1 likely to occur in the future given the location of the Tribal Headquarters or compound now  
 2 occupied by the Ayala Faction which is immediately adjacent to and across the street from the  
 3 Chukchansi Gold Resort and Casino (“Casino”) and a resort hotel which is visited and occupied  
 4 24 hours a day by the general public.

5 In the midst of this conflict, both the Lewis Faction and the Ayala Faction have established  
 6 tribal courts and appointed attorneys to serve as their “judges”, with each Faction claiming their  
 7 appointed tribal judge sitting in their created tribal court to be the only lawful, authorized tribal  
 8 court entitled to issue orders. The record is that these competing tribal courts or “tribunals” have  
 9 issued conflicting orders each recognizing the bodies that appointed them as the Tribe’s sole  
 10 authorized government.

11 Defendant Duran in his capacity as appointed judge of a tribal court established by the  
 12 Lewis Faction has issued a temporary restraining order materially impacting and limiting the  
 13 authority of Plaintiff as Sheriff and has issued a ruling requiring him to file responsive pleadings  
 14 to the lawsuit filed by the Tribe, CEDA and CIHA as directed by the Lewis Faction. Plaintiff’s  
 15 motion to dismiss for lack of jurisdiction having been denied by Defendant Duran, Plaintiff seeks  
 16 relief from all orders of Defendant Duran and any obligation to proceed further before him or any  
 17 other tribal court claiming such entities have no jurisdiction over him. To allow this Court to hear  
 18 full briefing on this issue by all concerned parties, and irreparable harm being present should an  
 19 injunction this temporary relief not be provided given the evidence before this Court, this Order  
 20 follows:

21 1. This Court by reason of the matters at issue, has jurisdiction pursuant to 28 USC  
 22 §1331 as Plaintiff’s Verified Complaint raises substantial Federal questions and violations of  
 23 Federal Statutes and Constitutional rights being at issue.

24 2. THE COURT FINDS that Plaintiff is likely to succeed on the merits. Plaintiff and  
 25 the public are likely to suffer significant and potentially life threatening irreparable harm in the  
 26 absence of relief and that the balance of equities tips in Plaintiff’s favor given all of the evidence  
 27 submitted by Plaintiff.

28 3. The TRO issued by Defendant Duran and the pending litigation in the Lewis

1 Faction Tribunal poses an imminent and irreparable threat to public safety thereby as it seeks to  
 2 limit or control Plaintiff's official duties. This restraining order sought by Plaintiff is in the public  
 3 interest and necessary to prevent injury and potential death of tribal faction members, as well as  
 4 potential injury and death to innocent members of the public who venture onto tribal property as  
 5 patrons of the Tribe's casino and resort and elsewhere. In fact, adherence to the TRO would  
 6 require the Sheriff to abrogate his duties under the law.

7 Plaintiff has no adequate remedy at law.

8 THE COURT FINDS that no bond is necessary.

9 Accordingly, IT IS HEREBY ORDERED that, pending an order by this Court as to  
 10 whether a preliminary injunction should issue, Defendants, their officers, agents, servants,  
 11 employees, and attorneys, and all persons acting by, through, under, or in concert with Defendants  
 12 (referred to collectively hereinafter as "Defendants") are enjoined from proceeding with the action  
 13 currently pending before Defendant Duran and filed by the Lewis Faction against the Sheriff,  
 14 individually and in his official capacity as the Madera County Sheriff. Defendants shall not order,  
 15 issue, enforce or attempt to enforce any order, judgment, ruling or decree of any kind against  
 16 Plaintiff or his employees, officers, officials, agents or attorneys. The temporary restraining Order  
 17 of August 6, 2013, issued by Defendant Duran is stayed and without further force and effect and  
 18 Plaintiff is relieved from any obligation to file responsive pleadings before the Lewis Faction  
 19 Tribunal, Defendant Duran, Judge Presiding, and no action against Plaintiff may be taken as a  
 20 result thereof pending further order of this Court. Defendants are required to advise all agents or  
 21 persons under their control of the terms of this Order.

22 Defendants, and each of them, shall be entitled to raise all issues objecting to the relief  
 23 sought by Plaintiff as the issuance of this Order is made without prejudice to any future rulings by  
 24 this Court after a hearing as ordered below.

25 IT IS FURTHER ORDERED that Plaintiff's papers filed in support of his application for\_a  
 26 temporary restraining order and a Supplemental Brief on the Issue of Venue, to be filed by  
 27 Plaintiff no later than 5:00 p.m. on Monday, October 21, 2013 together shall be treated as  
 28 Plaintiff's moving papers for a preliminary\_injunction. By stipulation of the parties and upon good

1 cause existing therefore, Defendants' Opposition Briefs are due October 25, 2013. Plaintiff's  
2 Reply Brief is due November 1, 2013. The hearing on Plaintiff's Request for a Preliminary  
3 Injunction is set for November 8, 2013, at 10:00 a.m. All counsel for all Defendants or interested  
4 parties desiring to appear at the hearing on November 8, 2013, must appear in person and may not  
5 appear telephonically.

6 IT IS SO ORDERED.  
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9 Dated: \_\_\_\_\_  
10 Honorable Richard Seeborg  
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12 United States District Court Judge  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document has been filed electronically on this 18th day of October , 2013, and is available for viewing and downloading to the ECF registered counsel of record, if any, and has also been served by email and mail as listed below.

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DATED this 15<sup>th</sup> day of October, 2013.

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